

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

- v. - :

SENTENCING MEMORANDUM

ROBERT M. QUINONES, :

07 Cr. 544-01 (DLC)

Defendant. :

- - - - - x

April 11, 2008

Honorable Denise L. Cote
U.S. District Judge
Southern District of New York
500 Pearl Street
New York, NY 10007

Dear Judge Cote:

I write on behalf of my client, Robert M. Quinones, in anticipation of his sentencing, which is scheduled for April 25, 2008. For the reasons set forth below, I urge the Court to impose a term of five years of probation with a special condition of long-term inpatient mental health and substance abuse treatment at Odyssey House in New York City, to be followed by outpatient mental health and substance abuse treatment.

I attach for the Court's consideration in connection with sentencing: Letter of Madeline Quinones (Ex. A); Letter of Brandan Michael Quinones (Ex. B); Letter of Linda Jane Quinones (Ex. C); Letter of Veronica Ayala (Ex. D); Letter of Katherine Ayala (Ex. E); Letter of Miriam Arroyo (Ex. F); Forensic Psychological Evaluation prepared by Dr. Jessica Pearson (Ex. G); and, Information concerning Odyssey House (Ex. H).

I. Objections to the Pre-Sentence Report

I have not yet received the final version of the pre-sentence report. If the defense has objections to it, I will forward them to the Court expeditiously.

II. Factual Background

____ Robert Quinones is a generous, loving, and ethical husband,

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father of two sons, uncle, and brother, whose serious mental health issues led him to commit the instant offense. He has been steadily and lawfully employed for many years, and has no criminal history. In the three years since the offense conduct ended, Robert Quinones has had no trouble with the law. He has prepared only accurate tax returns.

Robert Quinones was born in 1957, the third of five children born to Pablo Suarez DeJesus Quinones and Carmen Maisonet Quinones. He dropped out of high school at age 16 in order to enlist with the U.S. Navy, because he had lost two cousins and several friends in the Vietnam War and wanted to serve his country. He served for one and one-half years. He left the Navy early -- but with an honorable discharge -- after his father suffered a heart attack and his mother begged him to come home to help her out. As his wife Madeline writes in her letter to the Court, Mr. Quinones was always the one his mother asked for help, even when his siblings were closer to home. See Letter of Madeline Quinones, Exhibit A, at 1. After leaving the Navy, Mr. Quinones earned his GED. He began working at any job he could find to help support his parents. His father died in 1978 of a massive stroke. Mr. Quinones' mother became increasingly dependent upon him, and Mr. Quinones did all that he could to support his mother emotionally and financially. He worked long hours for a low wage at Cablevision. In 1983, he met his soul-mate, Madeline Quinones nee Arroyo, and they have been together for the last twenty-five years. Soon after they married, his oldest brother, Michael, died of HIV-related complications, to the deep sorrow of Mr. Quinones and their mother. Then, as Madeline and he were building their own family, with two young sons, his mother died unexpectedly of stroke in 1991, leaving Mr. Quinones entirely bereft.

Following his mother's death, Mr. Quinones began to suffer from depression and he isolated himself from his family. A charismatic, intelligent, hard-working man devoted to his family, Mr. Quinones had no experience with depression and few resources to cope with its debilitating effects. In order to cope with his depression, he self-medicated, first by obtaining prescription opiates from a pharmacist he knew, and then, when the prescription opiates became difficult to get, by using heroin,

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which he had seen his co-workers at Cablevision buy and use. This started what is now a 17-year downward spiral and a highly divided life.

At first, he was able to largely compartmentalize his substance abuse and his depression and continue to work and to be an active, engaged father and family member. After leaving Cablevision, he worked for several years at the New York City Board of Education (where his wife has been employed as a teacher for many years) as an Assistant Teacher. He left to work for Coca Cola, then found work as a security consultant for Slomin's. For several years, he also prepared taxes, working at H&R Block, during the tax season, in order to make extra income. He made several unsuccessful attempts to complete detoxification or rehabilitation programs. See Psych. Eval. at 5.

He was deeply involved not only with his own sons, but in the raising of his nieces and nephews, particularly the two sons of his sister, Linda, whose father did not participate in their upbringing. As Linda writes to the Court, Mr. Quinones guided her sons through adolescence, and made sure they had everything they needed to make them equipped to succeed. Her younger son wrote a poem for a school project when he was fifteen called "My Uncle," that read:

In this world there's no one as strong as he
with love and compassion for the whole world to see.
He stepped up as a father when my real one stepped
down,
then all of a sudden my frown turned around.
He is my uncle, my dad, and my hero and no one can take
that away,
for he is always here to brighten up my day.
His name is Robert Quinones, and god sent him to me,
and I will never give him up, we'll fight life and win,
you'll see.

Letter of Linda Quinones, attached as Ex. C, at 2.

Sadly, as his depression continued untreated, his efforts to push down and hide his suffering and his substance abuse grew

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less effective. His opiate use also increased, sometimes he was using as much as 15 bags of heroin a day. He became less able to be the active, engaged, father and family member he had always been. In August of 1998, he entered the Department of Veterans Affairs Opiate Substitution Program and was treated with a synthetic opiate used as a replacement therapy for heroin addiction. See Psych. Eval. at 5. The VA Program is aimed at helping people transition from heroin to methadone, but does not have a counseling component.

In 1999, while working at Slomin's Securities full-time, and earning supplemental money by preparing tax returns at H&R Block, Mr. Quinones became friendly with a co-worker named Orlando Reyes. Mr. Quinones told Reyes that he was going to start his own tax preparation business. Mr. Quinones obtained an E-file number under his wife's name, because she had better credit than he did. As Mr. Quinones built up the business, Reyes began to prepare tax forms for him, because Mr. Quinones was still working full-time as a security consultant, now at ADT Securities. The clients would drop off or mail in their information. Mr. Quinones would give the client information to Reyes, who would prepare the tax returns during the day while Mr. Quinones was at work. Mr. Quinones would E-file and sign the forms in the evenings. Mr. Quinones and Reyes shared the profits from the business. As his depression worsened and his use of opiates increased, Mr. Quinones had a very difficult time paying any attention to the tax forms. He would simply sign batches of completed tax returns that Reyes left for him, even when he saw entries that looked wrong to him. It was around this time that Mr. Quinones began to have such horrible and violent nightmares that he would wake up screaming or to find himself pressing down on his wife's arms while she lay next to him in bed. See Letter of Madeline Quinones, at 7. Reyes also prepared Mr. Quinones' and his wife's tax returns during this time period, and again, Mr. Quinones did not even review the forms, he just signed them. When he received the refunds, he realized it was more than he was entitled to, but because of his mental state, he simply let his concern go and used the money to pay for his expenses. By 2002, Mr. Quinones' addiction to heroin and his inability to face his problems had led him to revert to heroin use, on top of the synthetic opiate he was prescribed. Because of his heroin use, he had to leave

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the VA Opiate Dependence Program. Without the synthetic opiate, his substance abuse and mental health grew worse and worse, and the situation at Uncle Sam's Nephew continued. Each tax season, Reyes would prepare the returns and Mr. Quinones would file them. Outside of tax season, he had little or no contact with Reyes. Mr. Quinones was entirely passive and felt helpless to control the world around him. His conduct - using heroin, hiding his activities from his family, signing tax returns he knew were false - was so at odds with his self-image and the rest of his life that he struggled to accept what he was doing, and felt victimized. Finally, he returned to the VA Program in November 2003, and stopped using heroin. He began to regain some sense of self, but his depression continued. In September 2004, Mr. Quinones was contacted by IRS agents, and twice agreed to be interviewed by them, without counsel, and also gave consent for the IRS to make mirror images of the business's computers. After Mr. Quinones gave the IRS agents Reyes' contact information, Reyes disappeared.

Since the offense conduct ended, Mr. Quinones has prepared tax returns himself, and he has done so accurately. He has also had no issues with his own or his family's tax returns. He has not been able to work at all when it is not tax season. During the tax seasons, he has tried to prepare as many tax returns as possible, in order to earn income, but because of his depression, he has not been able to earn much money. Because of the loss of his income, and the ballooning of the variable rate on their mortgage, in 2007, the Quinones' could no longer make their mortgage payments, the bank repossessed their house, and they were forced to file for bankruptcy. As the IRS investigation continued, Mr. Quinones signed a tolling agreement permitting the extension of the statute of limitations for numerous tax returns.

In the years since the offense conduct ended, Mr. Quinones has continued to consistently attend the VA Clinic, and currently goes four times a week, receiving methadone and limited counseling aimed at opiate use. He has managed to stay free of heroin, other than two or three isolated relapses. His depression has continued, and he has only begun to receive treatment for it in the last month.

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On August 17, 2007, Mr. Quinones voluntarily surrendered to agents after the Indictment was unsealed. After his voluntary surrender, he suffered an anxiety attack and was taken to the emergency room before being processed by the marshals. He was released on bail the same day and has been in compliance with all of the conditions of his release. On December 21, 2007, Mr. Quinones pleaded guilty to Counts 1 to 27 of the Indictment. The total loss amount based on the offenses of conviction is \$106,577. The Government is also alleging relevant conduct of \$363,466.

Mr. Quinones recently was evaluated by a forensic psychologist, Jessica Pearson, who performed a clinical interview and psychological testing of Mr. Quinones, as well as the Personality Assessment Inventory, the Repeatable Battery of Neuropsychological Symptoms, and the Trauma System Inventory. The evaluation found that he has significant memory problems and an impaired ability to concentrate and attend to tasks. Psych. Eval., at 7, attached as Ex. G. The evaluation concluded that:

"Mr. Quinones's severe substance abuse, depressive disorder, and passive stance led him to be vulnerable to manipulation. . . . his insight and judgment were impaired from the drugs as well as from the depression. He was making choices and decisions which were clearly not in his or his family's best interests, from discontinuing treatment and hiding his problems from his family, to engaging in negligence and impulsive behavior in his work, which led to fraudulent practices. It is clear that Mr. Quinones has experienced a tremendous amount of guilt and shame from his drug abuse. It is likely that he became very used to avoiding and denying the truth of the deterioration of his personal life. It isn't difficult to see how this could also translate from his personal life to his professional life. Given an opportunity to expand his career and own a business, a huge sense of accomplishment, he took it, all the while denying the facts and avoiding any investigation into who was giving him this opportunity and how it was being obtained."

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Psych Eval., at 9-10, attached as Ex. G. Dr. Pearson recommends substance abuse treatment and intensive psychotherapy in a mandated treatment setting with strict enforcement of rules and structure. Id. at 10.

Last month, at the urging of his Pre-Trial Services Officer, Mr. Quinones began seeing a psychiatrist, who prescribed Wellbutrin for depression and Lunesta for insomnia, and they have begun weekly psychotherapy sessions. This is the first psychotherapy he has received since the death of his mother 17 years ago.

In addition to his mental health issues, Mr. Quinones' physical health is also poor. He requires surgery on both his knees for torn ligaments and blockage in the cartilage, and has difficulty walking. The methadone has caused obesity (he has gained approximately 75 pounds) and the loosening and falling out of his teeth.

During the eight months he has been on Pre-Trial Supervision, Mr. Quinones has not only been in compliance with his conditions, but also has been extremely open and honest with his supervising officer. It was from Mr. Quinones that Pre-Trial learned he was continuing to prepare taxes, which led the Court to order him to stop doing so. It was from Mr. Quinones' own reports that Pre-Trial became concerned about his mental state and urged him to seek treatment.

The guilt and shame Mr. Quinones has felt for years about his drug use has now been compounded by equally strong feelings that he committed the offense conduct, placing his wife and children in jeopardy, the last thing this exceptionally generous and giving man ever wanted to do. His wife Madeline writes that if he were to go to prison, "the sentence would be devastating for our family." Letter of Madeline Quinones, Ex. A, at 8. They have rarely been separated in their twenty-five years together, and they have already endured the loss of their first home, the declaration of bankruptcy, the shame of a criminal proceeding, and the constant fear of Mr. Quinones' incarceration.

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III. Applicable Sentencing Law

When imposing sentence, the Court is required to consider the factors set forth in 18 U.S.C. § 3553(a) in determining what is a reasonable sentence in each individual case. See United States v. Booker, 543 U.S. 220 (2005); see also United States v. Fernandez, 443 F.3d 19 (2d Cir. 2006).

Section 3553(a) directs the Court to impose a sentence that is "sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph 2." Section 3553(a)(2) states that such purposes are:

- (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
- (B) to afford adequate deterrence to criminal conduct;
- (C) to protect the public from further crimes of the defendant; and
- (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

To arrive at such a sentence, the Court is further directed to consider: (1) the nature and circumstances of the offense and the history and characteristics of the offender; (2) the kinds of sentences available; (3) the kinds of sentence and the sentencing range established in the Sentencing Guidelines; (4) policy statements issued by the Sentencing Commission; (5) the need to avoid unwarranted sentence disparities among similarly situated defendants; and (6) the need to provide restitution to any victims of the offense. See 18 U.S.C. § 3553(a)(1), (a)(3)-(7).

The Guidelines range is but one of many factors set forth in 18 U.S.C. § 3553(a) that a district court is to consider when imposing sentence. See Booker, 543 U.S. 220. The Supreme Court recently emphasized that the Guidelines are not presumptive and that even a district court's disagreement with the policy considerations of the Guidelines is a legitimate basis for

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sentencing below a given range. See Gall v. United States, 128 S.Ct. 586 (Dec. 10, 2007) (upholding a district court's sentence of probation in a case involving the distribution of over 10,000 pills of ecstasy where the Guidelines' range was 30-37 months); Kimbrough v. United States, 128 S.Ct. 558 (Dec. 10, 2007) (upholding a district court's decision to sentence a defendant below the Guidelines range based on a disagreement with the Guidelines' policy of treating the distribution of crack cocaine more severely than powder cocaine). Indeed, in Kimbrough, the Government conceded that "'courts may vary [from Guidelines ranges] based solely on policy considerations, including disagreements with the Guidelines.'" Id. at 570. In every case, the sentencing court "must make an individualized assessment based on the facts presented." Gall, 128 S.Ct. at 597.

IV. Any Term of Imprisonment Would Be Greater Than Necessary To Deter Mr. Quinones, Would Hinder His Rehabilitation, And Is Not Necessary To Promote Respect For The Law

The only statutory factor weighing in favor of an incarcerative sentence in this case is the advisory Guidelines; each of the other factors weighs strongly against incarceration and in favor of a probationary sentence.

Mr. Quinones' history and characteristics show that he is capable of living a law-abiding life. He has no criminal history. He is a responsible and loving person, as the letters from his family and the psychological evaluation richly attest, who suffers from severe drug addiction and depression. If these mental health issues are treated, he presents no risk of recidivism, given his strong ethical sense and shame and remorse, as well as the support of his wife and children.

The offense conduct was committed because of Mr. Quinones' mental health issues. He was extremely vulnerable to manipulation, as the forensic evaluation concluded, and because of his passivity, depression, and use of opiates, he did not question what was happening around him or employ his ordinarily strong judgment and sense of rectitude. Although he knew he was doing something wrong by filing the inaccurate forms, he was too frightened and confused by his depression and opiate use to act

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on his knowledge, but instead went along with what Reyes was doing.

Mr. Quinones has shown his remorse not only through how he has lived in the years since the offense conduct, but also in the manner he dealt with this investigation and prosecution. He voluntarily agreed to be interviewed by IRS agents. He gave consent to a full search of his business computers. He entered into a tolling agreement which permitted the prosecution of conduct now almost eight years old. He pleaded guilty without the benefit of a plea agreement. He has been open with his Pre-Trial Services Officer.

The Court has the authority to sentence Mr. Quinones to a lengthy probationary sentence with a mandated condition of lengthy residential treatment for his mental health and substance abuse issues, as well as medical care, until he is ready to transition to an outpatient setting. The forensic evaluation recommends exactly this, programmatic support in a mandated treatment setting with strict enforcement of rules and structure, followed by long term individual psychotherapy and pharmacological treatment for depression. Psych. Eval., at 11. The forensic evaluation does not recommend incarceration, because in a prison setting Mr. Quinones will not be able to receive the kind of treatment he requires in order to effectively deal with his depression and substance abuse, and incarceration would be likely to "severely impact his psychological functioning and worsen his depression." Id.

There is a residential facility in Manhattan that appears ideally suited to treating Mr. Quinones: Odyssey House. See Ex. H. Odyssey House offers one of the only residential programs in the country to combine community-based psychiatric care with intensive therapeutic treatment. Id. at 1. It has programming specifically aimed at older adults, rather than younger people, with the combination of mental health and substance abuse issues. Id. The program is accustomed to dealing with people transferred from the criminal justice system. Id. at 2. The participants are required to follow a strict psychiatric/medical regimen, and participate in appropriate educational and vocational activities for a period of twelve to eighteen months.

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Id. Because Odyssey House has a medical facility, as well as providing intensive mental health treatment, Mr. Quinones will be able to detoxify from his methadone addiction in a controlled setting. Methadone withdrawal is a serious and often frightening process, including bone pain, severe diarrhea and spasms, and is frequently described as more difficult than withdrawing from heroin. Because Mr. Quinones has health insurance (through his wife's employment at the Board of Education), his participation in Odyssey House would be covered if court-mandated. Such a program would be no easy feat for Mr. Quinones, who has now been addicted to opiates and severely depressed for nearly 17 years. Unlike his prior attempts at rehabilitation, he would not be able to leave this program (knowing jail would be the result) and he would be forced to face the demons he has so long avoided. In many ways, this would be a more difficult endeavor for Mr. Quinones than prison. If incarcerated, it is likely Mr. Quinones would be sent to a camp, where he could avoid any activities or interaction, sit alone day in and day out in his dorm room, and never deal with any of his issues.

Incarcerating Mr. Quinones would mean the imprisonment of someone who poses no risk of recidivism, if treated, who has evinced remorse, and who has already been punished significantly by a felony conviction, by the extreme shame of this situation, and by his guilt for putting his wife and children through this. It would also mean more time during which his severe mental health and substance abuse issues would go entirely untreated and it would subject him to the brutality of a "cold-turkey" methadone withdrawal, without trained medical supervision or psychotherapy.

The Sentencing Guidelines, which in this case advise a sentence of 30 to 37 months, based on the total tax loss, including over \$300,000 of uncharged conduct, do not take into consideration Mr. Quinones' post-offense conduct, his cooperation with the government by signing a tolling agreement, or the mental health issues that led him to commit the conduct, all of which bear directly on the sentence necessary to punish, deter, and rehabilitate this particular defendant.

A probationary sentence would not cause an unwarranted

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sentence disparity, given the particular characteristics of this defendant and this offense conduct. Tax fraud convictions are susceptible to a wide range of sentences, based on the particular nature of the defendants. For example, the owners of Cipriani restaurant were recently sentenced for a \$10 million dollar tax fraud. The son, Guiseppe, received a three year probationary sentence for this multi-million dollar fraud. The father received a conditional discharge.

The Supreme Court in Gall recognized that although custodial sentences are "qualitatively more severe than probationary sentences," "[o]ffenders on probation are nonetheless subject to several standard conditions that substantially restrict their liberty," for example, "Probationers may not leave the judicial district, move, or change jobs without notifying, and in some cases receiving permission from, their probation officer or the court. They must report regularly to the their probation officer, permit unannounced visits to their homes, refrain from associating with any person convicted of a felony, and refrain from excessive drinking." 128 S.Ct. at 595-96 (internal citations omitted).

In this particular case, the substitution of a requirement of lengthy inpatient residential treatment for any imprisonment seems appropriate. Mr. Quinones is a wonderful man in many ways, sensitive, caring, loving, ethical. The person his wife describes, who puts himself in danger to care for others, who has worked long hours to support his family, who was a model father and husband and son, is a person worth saving. That can only be done through sustained treatment. His depression and substance abuse stem from the loss of his mother, from which he has never recovered. The self-destructiveness and low self-esteem he has endured in the last 17 years since her death have crippled the charismatic, intelligent man described by his wife. A prison term will not address any of Mr. Quinones' issues and will only drive his self-esteem further into the ground. It would also worsen his depression, in a context in which no individual psychotherapy is available, and be dangerous given his difficulties with mobility because of his knee injuries.

The requirement of restitution and the special assessment

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will also serve as an additional punishment and deterrence to Mr. Quinones.

V. Waiver of Interest

In addition, if the Court orders restitution, Mr. Quinones respectfully requests that the Court waive the requirement of interest pursuant to Title 18 U.S.C. §3612(f)(3), otherwise, interest begins to accrue fifteen days after judgment. A waiver of interest would enable Mr. Quinones to repay the amount over time without the overwhelming burden of interest compounded daily, which he does not have the financial ability to pay. (Title 18 U.S.C. §3612(f) provides that interest accrues daily on the unpaid balance of an amount to be paid in restitution).

VI. No Fine Is Warranted

No fine is warranted here, where Mr. Quinones must pay a large restitution amount and a \$2700 special assessment, and is indigent. See U.S.S.G. § 5E1.2(a), (e); see also U.S.S.G. § 5E1.2, App. Note 3 (the fact that a defendant is represented by assigned counsel is a significant indicator of present inability to pay any fine).

VII. Conclusion

We ask that the Court consider all of these factors - along with its own sense of what would constitute a fair and just sentence - in determining the appropriate sentence for Mr. Quinones. See United States v. Jones, 460 F.3d 191, 195 (2d Cir. 2006) (noting that a sentencing judge may consider his or her own sense of what would constitute a fair and just sentence under all the circumstances, so long as all of the 3553(a) factors are taken into account). No term of imprisonment is needed to deter, rehabilitate or punish Mr. Quinones, and imprisonment would in fact thwart Mr. Quinones' rehabilitation. He is very aware of the wrongfulness of his conduct and desperately wants to break the hold of his opiate dependence and work through his depression and its root causes.

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Respectfully Submitted,

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Assistant Federal Defender
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cc: Michael P. Ben'ary, Assistant U.S. Attorney (via ECF)
Ross Kapitansky, U.S. Probation Officer (via hand
delivery)
Robert Quinones (via U.S. Mail)